IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 68 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANISH @ JOHN GOPALBHAI SHAH
Versus
DY.SECRETARY AND OTHERS

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Appearance :
MR ASHISH M DAGLI for the petitioner

MR ND GOHIL, APP for the respondents

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 01/07/2006

ORAL JUDGMENT

This petition is filed by the externee against whom an externment order was passed by the Deputy Police Commissioner, Zone-I,

Ahmedabad City and which is confirmed by the appellate authority. The petitioner was subjected to show-cause notice under Section 59 of the Bombay Police Act by which he was called upon to show-cause as to why the externment order should not be passed. The notice was issued under Section 59 on 15.09.2003. In the show-cause notice it is mentioned that the authority has tentatively taken a decision to extern the petitioner for a period of two years from Ahmedabad Rural as well as Gandhinagar, Mehsana, Kheda districts by exercising the powers under Section 56(b) of the Bombay Police Act. In the show-cause notice the particulars about the allegations levelled against the petitioner are given and according to the same the activities of the petitioner are dangerous as it is alleged that he is keeping dangerous arms with him from the areas mentioned in the show-cause notice. The petitioner replied to the said show-cause notice by his reply dated 8.10.2003. Thereafter, the Deputy Commissioner passed the impugned order of externment. The Deputy Police Commissioner, Zone-I, Ahmedabad City passed the impugned order on 3.6.2005. The said order is finding place at Annexure-B. By the aforesaid order, the petitioner is ordered to be externed from Ahmedabad Police Commissionerate area, Ahmedabad Rural, Gandhinagar, Kheda and Mehsana Districts for a period of two years from the date of receipt of the copy of the order by the externee. The aforesaid order was challenged by way of appeal before the appellate authority. The Deputy Secretary, Home Department, who heard the said appeal by his order dated 5th January 2006 partly allowed the said appeal and modified the order by reducing the externment period from two years to one year. The Appellate Authority has also modified the order further by restricting the externment areas to Ahmedabad Police Commissionerate area as well as Ahmedabad Rural. The petitioner has filed the present petition challenging the aforesaid order.

Learned advocate, Mr Ashish Dagli for the petitioner submitted that there is a gross delay in passing the externment order as the show-cause notice was issued under Section 59 on 15.09.2003 and the reply was given by the externee on 8.10.2003 and order of externment was passed on 3rd June 2005 as according to him even after the reply the first authority has taken a time of more than one year and eight months in passing the order of externment. He submitted that the authority could have very well passed the order of externment immediately if at all the the authority was of the opinion that the activities of the petitioner are prejudicial to public order. Yet, the order of externment was passed after more than one and half year of filing of the reply by the petitioner to the show-cause notice issued by the authority under Section 59 of the Bombay Police Act. The said point is taken by the petitioner in paragraph 11 of the petition. It is averred in the said paragraph that the order of externment is required to be set aside on the ground of unreasonable delay in passing the order.

No affidavit-in-reply is filed opposing the petition and therefore the delay has remained unexplained. Learned Addl. Public Prosecutor, Mr Gohil, after perusing the file which is available with him, has submitted that the petitioner-externee has sought adjournments from time to time and therefore the delay has occasioned. However, the particulars in this behalf as to for how many times the externee had asked for time are not placed on record. Even assuming that on few occasions the externee might have sought for time, the authority should have refused the demand for frequent adjournments. It is required to be noted that the object of passing of the externment order is to prevent the petitioner at the earliest from carrying out his activities in a particular area.

The inquiry under Section 59 of the Act being of urgent nature the authority should hold the same as expeditiously as possible and if the same are conducted treating the same like an ordinary trial or case, the objection for passing the order is bound to be frustrated. If the authority was of the opinion that the movement or the activities of the petitioner are such which are likely to cause harm to the person or property and they are such involving force and violence, the authority could have without showing any laxity passed the order of externment within a reasonable period. Delay in such cases would be fatal in a given case as the entire object of passing the order as stated above would be frustrated. There is nothing even to suggest that after the aforesaid show-cause notice and for such a long time of more than 18 months till the order was passed the externee continued with any such type of activities.

It is required to be noted that this Court has also in a series of judgments has already highlighted this aspect in connection with delay in passing the externment orders. In Sitaben M Thakore v. Commissioner of Police, Ahmedabad and others 1997 Cr.L.J. 4511 the learned Single Judge of this Court after referring to unreported decision of the Division Bench of this Court has observed in paragraphs nos.9 and 10 as under:-

> “9. On the reading of the aforesaid provisions, it is clear that, on reasonable grounds for believing that the person is engaged or about to be engaged in the commission of offence and further the witnesses are not willing to come forward is the important consideration for the purpose of passing an order under Section 56. The words in the Section 'is engaged or is about to be engaged' refers to the present activity and

continued one. It does not refer to a matter of past, meaning thereby that on finding that the activity of the person, the action arose as to what is the immediate near. The question may again arise as to what is the immediate near. If a person is directed or is required to be prevented from committing acts of violence which he is alleged to be repeatedly doing so, then the 'immediate near' would mean, 'within reasonable.' Such reasonable time cannot be the long period of six months or one year.

10. In an unreported judgment of Division Bench of this Court (Coram : K. J. Vaidhya and S. D. Dave, JJ.) being Special Civil Application No. 1295/94 decided on 24-1-1995, 'reasonable period' has been indicated as of 'six months'. In the said case, the externee was found to be guilty for delay in externment proceedings, but still the Court observed as follows :

> "The idea behind the concept appears to be a two fold one : firstly, send out a man who is engaged in antisocial activities in a particular area, and secondly; save the area and the people residing therein from a person and his illegal activities. The whole idea is to destroy an established net work which an underworld element has been able to create in a particular locality. This very idea was revolving around the above said provisions of Bombay Police Act, 1951, makes it obligatory that the whole exercise must be done as expeditiously as possible and within a reasonable time frame."

> Thus, whosoever may be the responsible whether the externee or the authority for delay of the proceedings, the very purpose of the exercise of powers under Section 58 are frustrated if the same is not exercised within a 'reasonable period', because the grounds which for externment which required an immediate action, cannot be said to have continued for a long period."

In the instant case even if the externee wanted time on absolutely unreasonable grounds, the authority should have refused the same and in any case should have passed the order within reasonable period. There is no material on record which justifies such inordinate delay in passing the order. The long delay on the part of the externing authority is sufficient to vitiate the impugned order of exernment.

Considering the judgements of this Court as referred to above, this petition is required to be allowed and the same is accordingly allowed. The impugned order of externment passed by the Deputy Police Commissioner, Ahmedabad, Zone-I dated 3rd June 2005 as well as the order dated 5.1.2006 passed by the State Government which is at Annexure-E in the compilation are quashed and set aside. Rule is made absolute. No order as to costs.

(P.B.Majmudar, J.)

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